

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 66 OF 2001

IN

NOTICE OF MOTION N.1844 OF 1998

IN

SUIT NO. 144 OF 1995

Hilda Charles Bracoi & Ors. ... Appellants
(Org.Plaintiffs)

Versus

The State of Maharashtra & Anr. ... Respondents
(Org. Defendants)

Mr. Milind Vasudeo i/b. Shiralkar & Co.for the
appellants.

Mr. Milind More, AGP, for Respondents.

CORAM: D.K.DESHMUKH &

J. H. BHATIA, JJ.

DATE : 21st August, 2007.

P.C.

1. By this Appeal, the appellants make a grievance against a part of the order dated 17th November, 2000

passed in Notice of Motion No.1844 of 1998 in Suit No.144 of 1995. The operative part of that order reads as under :-

"4. Defendants to maintain status-quo in respect of the suit property except using the same for any public purposes. If the property is used for any public purpose, Defendant to notify the Plaintiffs. On such, it will be open to the Plaintiffs to apply either under the provisions of the Land Acquisition Act or any other legislation in Court which of course will be subject to the final decision in the suit. Notice of Motion disposed of accordingly."

2. The learned Counsel for the appellants states that he has no grievance with the first sentence, quoted above, whereby the parties are directed to maintain status quo. He submits that however the later part of the order has been passed by the learned Single Judge on the assumption that it is the Government who is in possession of the land. The learned Counsel submits that apart from other documents on record, it is clear from the affidavit of Mr. Sanjay Nirbhavane, City Survey Officer, dated 14th August, 2007 filed in this Appeal, stating that the Government is not in possession of the land. In para 3 of that affidavit, Mr.Nirbhavane

states thus :-

"3. I say that the Order passed in the Notice of Motion by the learned Single Judge on 17.11.2002 as status quo is maintained on the suit property and the suit property is encroached upon by (1) Marble stone owners, (2) garages, (3) hutment dwellers and (4) Gymnasium."

The learned Counsel for the appellants states that the present appellants are running a marble stone shop, garage and a gymnasium on the land.

4. It appears from the affidavit that the Government is not in possession of any part of the land. Therefore, the last part of the order dated 17th November, 2000, quoted above, which appears to have been passed on the assumption that the Government is in possession of the property cannot survive. Therefore, the following bracketed portion of para 4 of the order dated 17th November, 2000 is set aside.

"(If the property is used for any public purpose, Defendant to notify the Plaintiffs. On such, it will be open to the Plaintiffs to apply

either under the provisions of the Land Acquisition Act or any other legislation in

Court which of course will be subject to the final decision in the suit.)"

Appeal disposed of.

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(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)